UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

, 120 mag.

CNN AMERICA, INC. AND TEAM VIDEO SERVICES, LLC

And

Case No. 5-CA-31828

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES & TECHNICIANS, COMMUNICATIONS WORKERS OF AMERICAN, LOCAL 31, AFL-CIO,

And

CNN AMERICA, INC. AND TEAM VIDEO SERVICES, LLC

And

Case No. 5-CA-33125 (formerly 2-CA-36129)

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES & TECHNICIANS, COMMUNICATIONS WORKERS OF AMERICAN, LOCAL 11, AFL-CIO.

CNN AMERICA, INC.'S OPPOSITION TO THE GENERAL COUNSEL'S MOTION FOR RECONSIDERATION OF THE PARTIAL EXTENSION OF TIME TO FILE AN ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS AND FOR CLARIFICATION REGARDING GENERAL COUNSEL'S REQUEST FOR LEAVE TO FILE APPENDICES SUMMARIZING EVIDENCE

Respondent, CNN America, Inc. ("CNN"), hereby opposes the General Counsel's motion for reconsideration of the Associate Executive Secretary's March 3, 2009 decision to grant in part the General Counsel's February 24, 2009 request for an extension of time to file cross-exceptions, a supporting brief, a brief in response to CNN's exceptions, and permission to exceed the page limitations applicable to both briefs. CNN respectfully submits that the March 3, 2009 order allows the General Counsel more than ample time to file its brief in response to CNN's exceptions. CNN also respectfully suggests that the denial of the request to file appendices in both briefs was appropriate, because the requested appendices would merely extend the page limit for argument. Accordingly, CNN respectfully requests the General Counsel's motion be denied.

CNN states as follows:

- the Executive Secretary's prior decision and the General Counsel has presented nothing in support of its motion aside from its own dissatisfaction with the prior ruling. Indeed, in the absence of any compelling reason for this motion, it can only be considered an additional request for an extension of time, which the Executive Secretary's March 3, 2009 decision expressly forbids ("No further extensions of time will be granted.") The General Counsel's request for additional time also must be taken in the context of the case, in which the General Counsel has repeatedly delayed the proceedings, with the result that the case did not come to trial until nearly five years after the charges were filed. Moreover, once the trial commenced, the General Counsel repeatedly requested and received continuances and delays throughout the hearing, such that the hearing proceeded for less than half of each month and extended for many months beyond what would have been the case if the trial had proceeded from day to day until concluded. Further delay on the part of the General Counsel should not be countenanced.
- 2. The Board's Rules and Regulations permit half as much time to file a brief in response to exceptions as they allow for the exceptions and a supporting brief. Compare NLRB Rules and Regulations § 102.46(a) with §§ 102.46(d) (providing 28 days for the filing of exceptions and 14 days for the filing of a responsive brief). CNN was allowed 90 days to file its exceptions to Judge Amchan's decision. Thus, under the ratio in the applicable rules, the General Counsel would have expected 45 days to file its brief in response to CNN's exceptions. Yet, the Associate Executive Secretary allowed the General Counsel 66 days to file its responsive brief. This is an ample amount of time, and the General Counsel in support of its motion provides no reason for its position that this is in some way less than fully appropriate.

- 3. With respect to General Counsel's request for 120 single-spaced 11 x 14 inch pages of appendices to accompany its brief in response to CNN's exceptions and its brief supporting cross-exceptions, the decision of the Associate Executive Secretary does not require clarification: it properly denied the General Counsel permission to file appendices. The Board's Rules and Regulations make no provision for appendices. Moreover, the appendices suggested by the General Counsel would defeat the purpose of the Board's briefing page limits. The combined 120 pages of appendices on *single-spaced* 11 x 14 paper are the equivalent of 240 *double-spaced* pages on 11×14 inch paper. That equates to 396 pages on double spaced $8 \frac{1}{2} \times 11$ paper. Such appendices would dramatically increase the size of the General Counsel's submission, and would render the page limits meaningless.
- 4. Labeling these appendices as "summaries" of the evidence does not excuse them from the page limits. No matter the label, they will be argument. That is clear from the General Counsel's prior "summaries." Those have not only been argumentative, but also inaccurate. For example, the summary charts prepared by Counsel for the General Counsel Daniel Collopy regarding the interview ratings for BIT positions in CNN's Washington Bureau contained numerous inaccuracies, miscalculations, and misstatements, as CNN demonstrated. *See* CNNA Ex. 739. In addition, the appendix submitted by the General Counsel to its post-hearing brief to Judge Amchan was on its face argument couched as "summary." If the General Counsel were permitted to submit such additional argument, equity would require that CNN be given the opportunity to file hundreds of pages of rebuttal, showing and responding to the errors. Accordingly, CNN respectfully requests the Associate Executive Secretary deny the General Counsel permission to file appendices.

5. To the extent not set forth above, CNN reiterates the arguments and positions contained in its Opposition To General Counsel's Request For Extension Of Time To File Cross-Exceptions, An Supporting Brief, A Responsive Brief, And Two Appendices And An Extension Of The Applicable Page Limits, filed and served February 25, 2009.

Respectfully Submitted,

AUL, HASTINGS, JANOFSKY & WALKER LLP

Zachary D. Fasman, Esq. Sandi F. Dubin, Esq. 75 E. 55th Street
New York, NY 10022
(212) 318-6000

Kenneth M. Willner, Esq. 875 15th Street, N.W. Washington, D.C. 20005 (202) 551-1700

Maureen E. O'Neill, Esq. Todd C. Duffield, Esq. 600 Peachtree Street, N.E. Suite 2400 Atlanta, GA 30308

Lisa H. Reeves Turner Broadcasting System, Inc. One CNN Center Atlanta, GA 30303

COUNSEL FOR RESPONDENT CNN AMERICA, INC.

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AFFIDAVIT OF SERVICE

Eric Engberg, being duly sworn, deposes and says as follows:

- 1. I am over 18 years of age, am not a party to this proceeding, and am employed by the law firm of Paul, Hastings, Janofsky & Walker LLP, 875 15th Street, N.W., Washington, D.C. 20005.
- 2. On the 9th day of March, 2009, I filed, by E-file, CNN America, Inc.'s Opposition To The General Counsel's Motion For Reconsideration Of The Partial Extension Of Time To File An Answering Brief To Respondent's Exceptions And For Clarification Regarding General Counsel's Request For Leave To File Appendices Summarizing Evidence, with Henry S. Breiteneicher, Associate Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570.

3. On the 9th day of March, 2009, I served one true and correct copy of CNN America, Inc.'s Opposition To The General Counsel's Motion For Reconsideration Of The Partial Extension Of Time To File An Answering Brief To Respondent's Exceptions And For Clarification Regarding General Counsel's Request For Leave To File Appendices Summarizing Evidence, by e-mail, on the following:

Gregory Beatty, Esq.
National Labor Relations Board
103 S. Gay Street, 8th Floor
Baltimore, MD 21202-4061
Gregory.beatty@nlrb.gov

Peter Chatilovicz, Esq.
Seyfarth Shaw
815 Connecticut Avenue, N.W., Suite 500
Washington, D.C. 20006
Attorneys for Team Video Services, LLC
pchatilovicz@seyfarth.com

David Biggar, Esq.
Region 18, National Labor Relations Board
330 Second Avenue South, Suite 790
Minneapolis, MN 55401
David.biggar@nlrb.gov

Dorothy C. Foley, Esq.
Allen Rose, Esq.
National Labor Relations Board
Region 2 – New York Resident Office
26 Federal Plaza – Room 3614
New York, NY 10278
Dorothy.foley@nlrb.gov
Allen.rose@nlrb.gov

Brian Powers, Esq.
O'Donoghue & O'Donoghue
4748 Wisconsin Avenue, N.W.
Washington, D.C. 20016
Attorneys for NABET-CWA Local 52031
bpowers@odonoghuelaw.com

Robert Marinovic, Esq.
Meyer, Suozzi, English & Klein, P.C.
1350 Broadway, Suite 501
New York, NY 10018
rmarinovic@msek.com
Attorneys for NABET Local 11

4. On the 9th day of March, 2009, I served one true and correct copy of CNN America, Inc.'s Opposition To The General Counsel's Motion For Reconsideration Of The Partial Extension Of Time To File An Answering Brief To Respondent's Exceptions And For Clarification Regarding General Counsel's Request For Leave To File Appendices Summarizing Evidence, by overnight delivery on the following and notified the same by telephone at the numbers below:

Steve Sturm, Esq. Sturm and Pearl 9 Wittman Drive Katonah, NY 10536 (914) 299-4007 National Association of Broadcast Employees and Technicians Local 11 145 West 30th Street, 12th Floor New York, NY 10001 (212) 757-3065

Communications Workers of America, District 2 c/o Jimmy Tarleu, Esq. 17000 Science Drive, Ste. 210 Bowie, MD 20715 (301) 809-4160

NABET-CWA Local 52031 962 Wayne, Suite 400 Silver Spring, MD 20910 (301) 495-4999

Mr. Larry D'Anna Team Video Services, LLC 4455 Connecticut Avenue, N.W., Suite 300 Washington, DC 20008 (202) 363-1000 Matt Harris, Esq.
Communications Workers of America,
AFL-CIO
501 3rd Street, N.W., Suite 800
Washington, DC 20001
(202) 434-1100

Euro Engling
Eric Engberg

Sworn to before me this 9th day of March, 2009

Notary Public, DC

Sai M. MacCormack Notary Public, District of Columbia My Commission Expires 4/30/2011